

## GENERAL AND COMMERCIAL LAWS

# 261

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 4

**NOTE :** Answer *SIX* questions including Question No.1 which is compulsory.

1. (a) Article 32 of the Constitution of India empowers the Supreme Court to enforce the fundamental rights guaranteed under Part III of the Constitution of India. Explain with the help of decided case law how the provisions of Article 32 of the Constitution of India have helped in the enforcement of fundamental rights.  
(8 marks)
- (b) Discuss the ordinance making powers of the President of India and of the Governor of a State as provided in the Constitution of India.  
(6 marks)
- (c) "Rule of *ejusdem generis* is merely a rule of construction to aid the courts to find out the true intention of the legislature." Explain.  
(6 marks)
2. Write notes on **any four** of the following :
  - (i) Circumstantial evidence
  - (ii) Appointment of experts by an arbitral tribunal under the Arbitration and Conciliation Act, 1996
  - (iii) The rule of strict liability as laid down in *Rylands vs. Fletcher*
  - (iv) Rules relating to presumption
  - (v) *Spes successionis*.  
(4 marks each)
3. Distinguish between **any four** of the following :
  - (i) 'Condition restraining alienation' and 'condition restraining enjoyment'.
  - (ii) 'Mortgage' and 'charge'.
  - (iii) 'Sale' and 'contract for sale'.
  - (iv) 'Set-off' and 'counter-claim'.
  - (v) 'Electronic form' and 'electronic record'.  
(4 marks each)
4. (a) Explain with illustration the doctrine of '*damnum sine injuria*' and '*injuria sine damnum*'.

(6 marks)

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- (b) List any ten instruments which are chargeable with duty under the Indian Stamp Act, 1899.

(5 marks)

- (c) What are 'cyber offences' under the Information Technology Act, 2000 ?

(5 marks)

5. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) A writ of \_\_\_\_\_ is issued to an inferior court preventing the latter from usurping jurisdiction which is not legally vested in it.
- (ii) A decree through which the right as to any property or the legal character of a person is judicially ascertained is known as \_\_\_\_\_.
- (iii) The word 'tort' is a French equivalent of English word \_\_\_\_\_.
- (iv) All documents produced for inspection of the court are called \_\_\_\_\_.
- (v) The provisions regarding use of adhesive stamps are given under section \_\_\_\_\_ of the Indian Stamp Act, 1899.
- (vi) The statement given by the court on the grounds of a decree or order as defined in section 2(9) of the Code of Civil Procedure, 1908 is known as \_\_\_\_\_.

(1 mark each)

- (b) Choose the most appropriate answer from the given options in respect of the following :

- (i) The relief of cancellation of a written instrument is available under the Specific Relief Act, 1963 —
  - (a) When an instrument is void or voidable at the option of plaintiff
  - (b) When the plaintiff may apprehend serious injury if the instrument is left outstanding
  - (c) Where the instrument requires registration but is not registered
  - (d) Where the conditions (a) and (b) mentioned above are fulfilled.
- (ii) An award may be challenged on the ground of —
  - (a) Incapacity of a party
  - (b) Invalidity of an arbitration agreement
  - (c) Both (a) and (b)
  - (d) None of the above.
- (iii) The Parliament is empowered to make laws on the subjects enumerated in —
  - (a) List-I
  - (b) List-II
  - (c) Both List-I and List-II
  - (d) None of the above.

- (iv) As per the Registration Act, 1908, a testator may deposit with any Registrar his will in a sealed cover with the name of the testator —
- (a) Personally
  - (b) Through an agent
  - (c) Through any person
  - (d) Either (a) or (b).
- (v) Where possession of the property is to be given to the mortgagee, the mortgage is called —
- (a) Usufructuary mortgage
  - (b) Simple mortgage
  - (c) Anomalous mortgage
  - (d) None of the above.
- (vi) Summary trials will apply to those offences which are not punishable with imprisonment for a term exceeding —
- (a) Two years
  - (b) One year
  - (c) 60 Days
  - (d) 90 Days.

*(1 mark each)*

- (c) Abhay's agricultural land was purchased by the government for the purpose of construction of a factory but no duty was paid for this transfer by the government. Abhay wanted to take back his land on the ground that the government has not paid the duty and, therefore, no sale deed was executed. Will Abhay succeed ? Give reasons.

*(4 marks)*

6. State, with reasons in brief, whether the following statements are true or false :
- (i) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005.
  - (ii) Article 174 of the Constitution of India empowers the Governor of a State to dissolve the State Legislature.
  - (iii) Arbitration is the means by which the parties to a dispute get it settled through the intervention of a third person.
  - (iv) The limitation for taking cognizance of certain offences has been prescribed by the Code of Criminal Procedure, 1973.
  - (v) If the parties to arbitration fail to determine the number of arbitrators, the arbitral tribunal shall consist of three arbitrators.
  - (vi) An easement can be transferred apart from dominant heritage.

- (vii) The doctrine of part-performance is applicable only where the transferee has taken possession of the immovable property.
- (viii) A judicial proceeding under the Code of Criminal Procedure, 1973 includes inquiry, trial and investigation.

*(2 marks each)*

7. (a) A magistrate of the first class passed a sentence of imprisonment for a term of three years with a fine of Rs.4,000 and in lieu of non-payment thereof an additional imprisonment for another one year. Has the aggrieved person any right to appeal against this sentence ?

*(6 marks)*

- (b) Anil prefers an appeal for setting aside the arbitral award on the ground that he was not given a proper notice of arbitral proceedings and thereby not being able to present his case. He also furnishes sufficient proof and pleads before the court that he received the arbitral award just 15 days back. Decide with reasons —
- (i) whether Anil will succeed in his prayer; and
  - (ii) whether the law of limitation will not be a bar ?

*(5 marks)*

- (c) Ram and Shyam sell rice for Rs.25,000 to Sohan and Mohan. Sohan sells cloth worth Rs.28,000 to Shyam. Sohan files a suit against Shyam for recovery of price of cloth. Shyam claims set-off of the cost of rice in this suit. Will he succeed ?

*(5 marks)*

8. (a) Ajoy voluntarily makes a gift of his immovable property to Bijoy. Bijoy accepts the gift. The possession of the property was given to Bijoy but the gift deed which required registration under section 123 of the Transfer of Property Act, 1882 was not registered. Whether Ajoy, the donor can revoke the gift ? Decide.

*(6 marks)*

- (b) Amrit contracts Bhushan to sell a piece of land consisting of five bighas of land for Rs.5 lakh. Subsequently, it turns out that only four bighas of land belongs to Amrit. Whether specific enforcement of such part-contract may be possible on the part of either party to the contract ? Decide by referring the specific provisions of the Specific Relief Act, 1963.

*(5 marks)*

- (c) Angad is charged for murder of Binod. The charge sheet is filed in the court of Chief Judicial Magistrate, who passed an order of sentence of imprisonment for life. Angad engages you as an advocate. Advise the course of action to Angad giving reasons.

*(5 marks)*

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